

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IES UTILITIES INC.	DOCKET NO. E-21258
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ORDER ON REMAND

(Issued February 4, 2000)

On June 17, 1999, Bradley J. Rutherford, Paula J. Rutherford, Bradley D. Price, and Judith Price (collectively referred to as "Rutherford") filed a petition for judicial review in Marshall County district court of various Board orders granting electric franchise and denying rehearing in Docket No. E-21258. The district court proceeding is identified as case No. CV3082-0699. Rutherford filed a motion in Marshall County district court asking that the court take additional evidence on several issues. By order issued November 19, 1999, the district court denied all aspects of the motion but one. The district court remanded the case to the Board for consideration of whether additional evidence should be taken on a single issue or question set forth by the judge: whether "[t]he actual easement on the Rutherford property is 100 feet in width, more or less, rather than the 30 or 40 feet discussed at the administrative hearing." District Court order (11/19/99), p. 3. Rutherford and IES Utilities Inc. (IES) both filed briefs with the Board pursuant to the court order. The court directed the Board to determine, based on the statement in the court's order

and the briefs submitted, whether such further evidence has impact on the decision of the agency, and, if so, the effect of such evidence.

On the question remanded by the district court, Rutherford claims the evidence is unclear and that the actual easement granted by the Board is 100 or 140 feet wide, rather than 40 feet wide. While Exhibit E, which contains a description of the area subject to the easement, was revised several times, the final exhibit E clearly states that "[t]he proposed right of way easement is located on the first forty feet north on new Highway 30 road right of way, which is the southernmost forty feet of the Rutherford property." The July 17, 1998, proposed decision of the administrative law judge (ALJ), which was affirmed by the Board, also notes that IES seeks an easement 40 feet wide across the entire southern border of the Rutherford property. ALJ decision, p. 20. In analyzing the request for a 40-foot easement, the ALJ noted at page 22 that the easement sought by IES "is only as large as necessary to allow for construction and maintenance of the proposed transmission line." Other limitations were placed on IES's right to eminent domain, including the deletion of the right to place guy wires and anchors on the property.

The Board finds nothing in the record to indicate the easement is anything other than 40 feet. No additional evidence is necessary because Exhibit E, and the remainder of the record, clearly indicates the easement is 40 feet in width on the relevant property, not 100 feet or 140 feet.

The only possible source of confusion in the width of the easement arises from 199 IAC 11.2(6)"e." This rule requires the map that is part of Exhibit E show

any buildings within 100 feet of the proposed line. The evidence demonstrated there are no buildings within this corridor, and the last sentence at the bottom of page 2 of Exhibit E confirms the map shows no buildings within this corridor. Rutherford in his brief filed with the Board said Exhibit E prohibits dwellings within 100 feet of the transmission line. This is not the case—Exhibit E only states there are no existing buildings within 100 feet to be shown on the map. This does not represent an extension of the easement corridor or a prohibition against future construction by Rutherford. The easement remains 40 feet wide.

Rutherford also filed an objection with the Board to the franchise itself on July 26, 1999. In the objection, Rutherford claimed the franchise erroneously vested IES with the right to condemn to place guy wires and anchors. This is also incorrect. The standard franchise language does refer to placement of guy wires and anchors, but only to the extent as may be necessary and as prescribed and approved by the Board in its order granting franchise. In the orders in this case, the Board clearly restricted the eminent domain authorization and did not give IES the right to condemn to place guy wires and anchors on Rutherford's property. While the district court may have addressed this point and it may no longer be disputed, the Board emphasizes that IES's right to condemn is limited as contained in the Board's orders and that the Board did not grant IES the authority to place anchors and guy wires on the Rutherford property.

IT IS THEREFORE ORDERED:

1. Pursuant to the Marshall County district court's order issued November 19, 1999, the Utilities Board states that no additional evidence is required to determine the width of the easement granted on the Rutherford property. The evidence clearly demonstrates the width of the easement is 40 feet, not 100 feet or 140 feet. The decisions in Docket No. E-21258 were based on an easement width of 40 feet and, therefore, further evidence on this issue would not impact the decision of the agency.

2. The decisions in Docket No. E-21258 do not grant IES Utilities Inc. the right to condemn to place guy wires and anchors on Rutherford's property.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 4th day of February, 2000.